

Appl. No. 09/751,293 Amdt. Dated 06/21/2004 Reply to Office Action of March 19, 2004

## REMARKS/ARGUMENTS

This Amendment is in response to the Office Action mailed March 19, 2004.

In the Office Action, claims 6, 8, 17, 26, 35, 41, 49-50, and 56-57 were objected to and would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, Applicant has rewritten claims 6, 8, 17, 26, 49-50 and 56-57 to place these claims into independent form. These rewritten claims add no additional limitations and are consistent in same or even broader scope from their original dependent form. Claims 35 and 41 remain as dependent claims and in their objected state. These claims are allowable based on an allowability of their independent claims. Withdrawal of the objection is respectfully requested.

Moreover, claims 1-5, 7, 9-16, 18-25, 27-34, 36-40, 42-48 and 51-55 were rejected under 35 U.S.C. §103(a). In particular, claims 1-5, 7, 9, 28-34, 36-40, 42-48 & 51-55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Engwer (USP 5,987,062) in view of IEEE Standard (ISO/IEC 8802-11, ANSI/IEEE Std 802.11, August 20, 1999 at pages 34-58 (hereinafter referred to as "IEEE 802.11 Standard") in further view of Menezes (USP 5,621,894). Claims 10-13, 16, 19-22 & 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Engwer in view of the IEEE 802.11 Standard and in further view of Menezes and Boldl (6,182,043). Claims 18 & 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Engwer in view of the IEEE 802.11 Standard in further view of Menezes and in further view of Boldl and Hwang (6,614,937). Claims 14-15 & 23-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Engwer in view of the IEEE 802.11 Standard and in further view of Menezes, Boldl and Kanljung (6,438,108). Applicant respectfully traverses these rejections in their entirety.

Herein claims 1-5, 7, 9-16, 18-25, 27-34, 36-40, 42-48 and 51-55 are considered unpatentable over <u>Engwer</u> and secondary cited references. Applicants respectfully traverse the rejection because <u>Engwer</u> is not a valid prior art reference. The Office Action uses <u>Engwer</u> as a prior art reference under 35 USC §103(a). However, 35 USC §103(c) excludes references which

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may qualify as prior art under 35 USC § 102(e), (f), and (g) from being used as a prior art reference under 35 USC § 103(a). The text of 35 USC § 103(c) recites that

"[s]ubject matter developed by another person, which qualifies as prior art under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." See 35 USC §103(c), MPEP 706.02(I)(1).

The subject matter of <u>Engwer</u> and the claimed present invention were, at the time the invention was made, owned by Nortel Networks Corporation or subject to an obligation of assignment to Nortel Networks Corporation. An assignment of the '062 patent to Nortel Networks Corporation was recorded at Reel No. 010871 and Frame No. 0324 in the U.S. Patent and Trademark Office as set forth in Exhibit 1. Furthermore, the subject application has an effective filing date of August 18, 2000, which is less than one year from the issue date of <u>Engwer</u>. Therefore, <u>Engwer</u> is not a valid prior art reference and does not obviate Applicants' claims 1-5, 7, 9-16, 18-25, 27-48 and 51-55 as pending.

Hence, withdrawal of the 35 USC §103(a) rejection is respectfully requested.

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## Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOŁOFF, TAYLOR & ZAFMAN LLP

Dated: 06/21/2004

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Attachments

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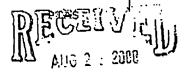
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RECORDATION DATE: 06/23/2000

REEL/FRAME: 010871/0324

NUMBER OF PAGES: 8

BRIEF: ASSIGNMENT OF ASSIGNOR''S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

NETWAVE TECHNOLOGIES LIMITED

DOC DATE: 12/29/1999

ASSIGNEE:

NORTEL NETWORKS CORPORATION 380 ST. ANTOINE STREET WEST WORLD TRADE CENTER OF MONTREAL 8TH FLOOR MONTREAL, QUEBEC, CANADA H2Y 3Y4

SERIAL NUMBER: 08439083 PATENT NUMBER: 5838730 FILING DATE: 05/11/1995 ISSUE DATE: 11/17/1998

SERIAL NUMBER: 08440436

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SERIAL NUMBER: 08439337 PATENT NUMBER: 5729680

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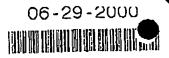
010871/0324 PAGE 2

SERIAL NUMBER: 08787843 PATENT NUMBER: 5875186

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Other:	Additional name(s) & address(es) altached? No Yes
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